

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

GREGORY A. FIGEL,

Plaintiff,

v.

Case No. 2:04-cv-164  
HON. GORDON J. QUIST

GERALD RILEY, et al.,

Defendants.

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**OPINION AND ORDER APPROVING MAGISTRATE JUDGE'S**

**REPORT AND RECOMMENDATION**

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The Court has reviewed the Report and Recommendation filed by the United States Magistrate Judge in this action on April 27, 2007. The Report and Recommendation was duly served on the parties. The Court has received objections from the defendants. In accordance with 28 U.S.C. § 636(b)(1), the Court has performed *de novo* consideration of those portions of the Report and Recommendation to which objection has been made.

Defendant argues that since discovery ended they can show that they were not involved in the denial of plaintiff's First Amendment rights. Nothing that has been presented by defendants can support a finding of no genuine issue of material fact necessary to establish summary judgment. Defendants have presented an argument that they were not involved in removing plaintiff from the Kosher meal program and that it was only Special Activities Coordinator Mr. Burnett who made the decision to remove plaintiff from the Kosher meal program. However, it appears that defendants may have had some involvement which led to a decision that removed plaintiff from the

Kosher meal program. The issue presented in this case is whether plaintiff's First Amendment rights were violated when he was removed from the Kosher meal program. Whether a particular prison policy was followed or is constitutional is not relevant to whether plaintiff's First Amendment rights were violated when the subjective decision was made to remove plaintiff from the Kosher meal program. Similarly, defendant's motion for summary judgment on the retaliation claim is denied for the reasons stated in the recommendation.

THEREFORE, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge (Docket #117) is approved and adopted as the opinion of the court.

IT IS FURTHER ORDERED that defendant's motion for summary judgment (Docket #106) is DENIED.

Dated: June 20, 2007

/s/ Gordon J. Quist  
GORDON J. QUIST  
UNITED STATES DISTRICT JUDGE